

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---------------------------------|---|------------------------------------|
| JOSE ENRIQUE NUÑEZ, III, | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | CIVIL ACTION NO. 19-CV-0859 |
| | : | |
| PRIME CARE HEALTH, INC. | : | |
| Defendant. | : | |

ORDER

AND NOW, this 26th day of March, 2019, upon consideration of Plaintiff Jose Enrique Nuñez's Motion to proceed *In Forma Pauperis* (ECF No. 5), his Prison Account Statement (ECF No. 6), and his *pro se* Complaint (ECF No. 2), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED**.
2. Plaintiff Jose Enrique Nuñez, III, #2016-0705, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b). Based on the financial information provided by plaintiff, he is not assessed an initial partial filing fee. In each month when the amount in Nuñez's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to plaintiff's inmate trust fund account until the fees are paid. Each payment shall reference the docket number for this case, Civil Action No. 19-859.
3. The Clerk of Court is directed to **SEND** a copy of this Order to the Warden of the Berks County Jail.
4. The Complaint is **DEEMED** filed.
5. The complaint is **DISMISSED without prejudice** for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), for the reasons stated in the Court's Memorandum.

6. Nuñez is given leave to file an amended complaint within thirty (30) days of the date of this Order. If Nuñez files an amended complaint, he must identify all of the defendants in the caption of the amended complaint. Any individual or entity that is not listed in the caption will not be treated as a defendant. Nuñez may refer to a defendant by last name only if that is the only identifying information possessed. If Nuñez wishes to name individuals for whom he does not have any identifying information, he may refer to those individuals as John Doe #1, John Doe #2, etc. The amended complaint must also clearly describe how each defendant was responsible for violating Nuñez's rights. When drafting his amended complaint, Nuñez should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk of Court shall not make service until so **ORDERED**.

7. The Clerk of Court shall **SEND** Nuñez a blank copy of this Court's form complaint to be used by a *pro se* prisoner filing a civil action pursuant to § 1983 bearing the civil action number for this case. Nuñez may use this form to file his amended complaint.

8. If Nuñez fails to file an amended complaint, his case may be dismissed without prejudice for failure to prosecute without further notice.

BY THE COURT:

/s/ Gerald Austin McHugh

United States District Judge